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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/604,566	07/30/2003	Bruce Preston Williams	FGT 1697 PA	1565

28549 7590 04/20/2006

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EXAMINER

NEWHOUSE, NATHAN JEFFREY

ART UNIT	PAPER NUMBER
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3727

DATE MAILED: 04/20/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

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Office Action Summary	Application No.		Applicant(s)	
	10/604,566		WILLIAMS ET AL.	
	Examiner		Art Unit	
	Stephen K. Cronin		3727	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

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A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 23 January 2006.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 21-40 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 21-40 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
 Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
 Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413) |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____ |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Continued Examination Under 37 CFR 1.114

1. A request for continued examination under 37 CFR 1.114, including the fee set forth in 37 CFR 1.17(e), was filed in this application after final rejection. Since this application is eligible for continued examination under 37 CFR 1.114, and the fee set forth in 37 CFR 1.17(e) has been timely paid, the finality of the previous Office action has been withdrawn pursuant to 37 CFR 1.114. Applicant's submission filed on 23 January 2006 has been entered.

Double Patenting

2. A rejection based on double patenting of the "same invention" type finds its support in the language of 35 U.S.C. 101 which states that "whoever invents or discovers any new and useful process ... may obtain a patent therefor ..." (Emphasis added). Thus, the term "same invention," in this context, means an invention drawn to identical subject matter. See *Miller v. Eagle Mfg. Co.*, 151 U.S. 186 (1894); *In re Ockert*, 245 F.2d 467, 114 USPQ 330 (CCPA 1957); and *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970).

A statutory type (35 U.S.C. 101) double patenting rejection can be overcome by canceling or amending the conflicting claims so they are no longer coextensive in scope. The filing of a terminal disclaimer cannot overcome a double patenting rejection based upon 35 U.S.C. 101.

3. Claim 25 objected to under 37 CFR 1.75 as being a substantial duplicate of claim 28. When two claims in an application are duplicates or else are so close in content that they both cover the same thing, despite a slight difference in wording, it is proper after allowing one claim to object to the other as being a substantial duplicate of the allowed claim. See MPEP § 706.03(k).

Claim Rejections - 35 USC § 103

4. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

5. Claims 21-40 are rejected under 35 U.S.C. 103(a) as being unpatentable over Boudah 5,143,415 in view of Burns 3,734,110, Eck 2,608,420 and Aftanas et al 6,056,176.

Boudah teaches a rack assembly for a truck bed; however, the structure of the device is capable of being used as claimed. The front supports would be capable of coupling to the roof of the cab if the front leg portions were sized differently or if the rack were placed at an angle. Boudah discloses that the leg portions may be sized according to the needs of the user (column 2, Line 50). While the primary purpose of the telescoping racks is for disassembly and storage, the rack is perfectly capable of being moved between positions while attached to the truck. With regards to the claims, the Boudah device has the following elements: a first, intermediate, and second pair of supports (17 and 18) that are telescopically coupled to each other, 2 pairs of Leg members (11) attached to the support members and to the vehicle, cross members (17 and 18) extending between the first and second support members, and bottom portions of the Leg members (2) with a tongue portion (6) for engaging the slotted sidewall rails (1). With regards to claims 18-20, the first supports of the Boudah device are capable of being fixedly coupled to the roof of a vehicle. The bottom portions of the Leg members have holes that receive a bolt for coupling to the tongue portions in the . preferred

embodiment, but the holes would be capable of receiving a bolt capable of coupling the bottom portion of the Leg members to the truck roof. Additionally telescoping action of the Boudah device, which allows it to be retracted and extended, is created by inserting the second pair of supports into the first pair of supports. The Leg members are movable on the truck bed by their coupling to the tongue portion that is inserted into the channels that are fixed to the side of the truck bed.

To the extent that Boudah does not explicitly disclose the front pair of legs being attached to the roof rack, Boudah discloses a rack of nearly identical structure to that of Burns having two pairs of Leg members with cross bars extending there between that are connected by two support members. Burns teaches a prefabricated structure adapted to be attached to a vehicle top that includes a pair of Leg members (35) attached to the truck bed section of a vehicle and a pair of Leg members (10) attached to the roof section of the vehicle where support members (32) extending between the roof rack section and the truck bed section. Each pair of Leg members has a cross member (31 and 48) that extends between the Leg members. Burns also teaches a second embodiment where a cover can be fit to the frame; however, the cover is for the side of the vehicle. As previously stated, the structure of the Boudah device and Burns device are very similar, however the front pair of Leg members of the Burns device is shorter than the rear pair of Leg members and attached to the roof of the vehicle. Boudah discloses that the Leg members may be sized according to the needs of the user; therefore, it would have been obvious to one skilled in the art at the time of invention to modify the front pair of Leg members of the Boudah device as in the

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technology of Burns so that the front pair of leg members are short and attached to the roof of the vehicle.

Aftanas and Eck both teach supplemental support members. As shown in the previous action by Aftanas et al (US 6056176), the addition of a supplemental cross member to a rack fixed on a vehicle is known in the art. Aftanas does not teach the fastening means that include protrusions, one being spring-loaded, that engage holes. Eck teaches a load bracing structure for vehicles that includes protrusions that engage holes as fastening means. The Eck device has a fixed protrusion (23) and a spring-loaded protrusion (25) that engage holes (18) to fasten the support member (19) to the frame. The Boudah device support members have a plurality of holes that would sufficiently receive the protrusions of the Eck device. It would have been obvious to one skilled in the art at the time of invention to appropriately size the protrusions of the Eck support member to engage with the plurality of holes in the Boudah device's support members, thereby adding a supplemental support member that is selectively mounted between the pairs of supports.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Stephen K. Cronin whose telephone number is 571-272-4536. The examiner can normally be reached on M-F 8:00am-5:30pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Nathan Newhouse can be reached on 571-272-4544. The fax phone

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number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Stephen K. Cronin
Primary Examiner
Art Unit 3727

skc